

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 5**

DYNAMIC SCIENCE, INC.

Employer

and

Case 5-RC-15189

DISTRICT LODGE 12, LOCAL LODGE 2424,
INTERNATIONAL ASSOCIATION OF MACHINISTS AND
AEROSPACE WORKERS

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction.
3. The labor organization involved claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. Dynamic Science, Inc. (herein “the Employer” or “the Company”), a Delaware corporation with an office and place of business located at Aberdeen Province Grounds, Aberdeen, Maryland, is engaged in providing technical services to the United States Army. During the past twelve months, a representative period, the Employer has received gross revenues in excess of \$50,000 from the United States Army, an agency of the United States government. Accordingly, I find the Employer is engaged in commerce within the meaning of the Act. Moreover, the parties stipulated the Employer, based on its operations described above, has a substantial impact on the national defense of the United States.

The parties stipulated, and I find, the Union is a labor organization within the meaning of Section 2(5) of the Act. There is no history of collective bargaining for any of these employees.

District Lodge 12, Local Lodge 2424, International Association of Machinists and Aerospace Workers (herein “the Petitioner” or “the Union”) filed a petition seeking to represent a unit of all full-time and regular part-time artillery testers and artillery test leaders employed by the Employer at its Aberdeen Proving Grounds facility, Aberdeen, Maryland, but excluding all other employees, office clerical, professional, managerial, guards and supervisors as defined in the Act. The only issue raised at the hearing was whether artillery test leaders are supervisors within the meaning of Section 2(11) of the Act. The Employer contends that artillery test leaders are statutory supervisors, while the Petitioner contends that they are eligible employees.

The parties stipulated at the hearing that program manager Al Moran, and range supervisor Jerry Overbay are supervisors as defined under Section 2(11) of the Act. The parties stipulated Ruth Peterson is an office clerical who does not share a community interest with the petitioned-for unit and should be excluded from any unit found appropriate.

Employer’s Operation

The Employer serves as a contractor to the United States Army at Aberdeen Proving Grounds where it performs tests on certain weapons. The weapons testing is performed by the artillery testers and the artillery test leaders.

Test Artillery Test Leaders

John Gillion has been employed as an artillery test leader for about three years. Prior to being an artillery test leader, Gillion was employed as an artillery tester. Gillion testified that he does not recall being provided any job description at the time he became a test leader and does not recall being told what his duties would be when he became a test leader. He reports every morning at 7:00 a.m. to Jerry Overbay, the range supervisor. According to Gillion, Overbay prepares a schedule each day for the work to be preformed. Gillion states during a typical day, he makes sure who is working with him that day, which is two or four people, and he checks with the test director concerning what needs to be done. According to Gillion, he then performs the test with the testers making sure everything functions in a safe manner. Gillion states he does not have the ability to hire, fire, promote, demote or grant overtime to employees. In fact, Gillion states he spends almost all of his time performing the same work as testers. Gillion testified he is responsible for safety, but states that it is also the responsibility of any tester or test director to stop a safety violation when they see it. Gillion is not aware that he possesses any supervisory indicia.

Employer's Position

The Employer, who presented no witnesses with first-hand knowledge of the day-to-day duties performed by the artillery test leaders,¹ contends the artillery test leaders are supervisors based on the two documents attached hereto as Exhibit 1 and 2. Exhibit 1 is a page from the contract between the Army and the Employer, and Exhibit 2 is a three-page portion of the 1993 wage determination covering this job.²

Conclusions

Section 2(11) of the Act, 29 U.S.C. Section 152, provides:

The term 'supervisor' means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is to be read in the disjunctive; the possession of any one of the authorities listed is sufficient to place an individual invested with this authority in the supervisory class. Mississippi Power Co., 328 NLRB 965, 969 (1999), citing Ohio Power v. NLRB, 176 F.2d 385, 387 (6th Cir. 1949), cert. denied 338 U.S. 899 (1949). Applying Section 2(11) to the duties and responsibilities of any given person requires the Board to determine whether the person in question possesses any of the authorities listed in Section 2(11), uses independent judgment in conjunction with those authorities, and does so in the interest of management and not in a routine manner. Hydro Conduit Corp., 254 NLRB 433, 437 (1981). Thus, the exercise of a Section 2(11) authority in a merely routine, clerical, perfunctory, or sporadic manner does not confer supervisory status. Chicago Metallic Corp., 273 NLRB 1677 (1985). As pointed-out in Westinghouse Electric Corp. v. NLRB, 424 F.2d 1151, 1158 (7th Cir. 1970), cited in Hydro Conduit Corp.: "the Board has a duty to employees to be alert not to construe supervisory status too broadly because the employee who is deemed a supervisor is denied employee rights which the Act is intended to protect." See also Quadrex Environmental Co., 308 NLRB 101, 102 (1992). In this regard, employees who are mere conduits for relaying information between management and other employees are not statutory supervisors. Bowne of Houston, 280 NLRB 1222, 1224 (1986).

In enacting Section 2(11), Congress emphasized its intention that only supervisory personnel vested with "genuine management prerogatives" should be considered supervisors, and not "straw bosses, leadmen, setup men and other minor supervisory employees." See **Senate Rep. No. 105, 80th Cong., 1st Sess. 4**, reprinted in **1 NLRB Legislative History of the Labor Management**

¹ The Employer's sole witness was Richard Cheliras, Director and Division Manager, General Manager for the Defense Services Technical Division of Dynamic Science, Inc. Mr. Cheliras testified that the last time he observed artillery testers and artillery test leaders performing their jobs was in mid-October 2000, for about ten minutes.

² Petitioner objected to the receipt of these Exhibits for lack of a foundation. While the receipt of these documents in the record raise some issues, for the purposes of this decision, I have reviewed them and considered them to be what the Employer asserts they are, a portion of their current contract with the Army and a portion of the 1993 wage determination.

Relations Act, 1947. The Board has long recognized "there are highly skilled employees whose primary function is physical participation in the production or operating processes of their employer's plants and who incidentally direct the movements and operations of less skilled subordinate employees," who nevertheless are not supervisors within the meaning of the Act, since their authority is based on their working skills and experience. Southern Bleachery & Print Works, 115 NLRB 787, 791 (1956), enfd. 257 F.2d 235 (4th Cir. 1958), cert. denied, 359 U.S. 911; Gulf Bottlers, Inc., 127 NLRB 850, n. 3, 858-861 (1960), enfd. sub nom, United Brewery Workers v. NLRB, 298 F.2d 297 (D.C. Cir. 1961); Koons Ford of Annapolis, 282 NLRB 506, 513-514 (1986), enfd. 833 F.2d 310 (4th Cir. 1987), cert. denied 485 U.S. 1021 (1988). See also KGW-TV, 329 NLRB No. 39 (1999) ("even the exercise of substantial and significant judgment by employees instructing other employees based on their own training, experience and expertise does not translate into supervisory authority responsibly to direct other employees").

The party seeking to exclude an individual from voting for a collective-bargaining representative has the burden of establishing that the individual is ineligible to vote. Golden Fan Inn, 281 NLRB 226, 229-230 fn. 12 (1986). As stated in Ohio Masonic Home, 295 NLRB 390, 393 (1989): "in representation proceedings such as this, the burden of proving that an individual is a supervisor rests on the party alleging that supervisory status exists. Tucson Gas & Electric Co., 241 NLRB 181 (1979)." Accord: Carlisle Engineered Products, 330 NLRB No. 189 (2000); Fleming Companies, 330 NLRB No. 32, n.1 (1999); Bennett Industries, 313 NLRB 1363 (1994). Conclusory evidence, "without specific explanation that the [disputed person or classification] in fact exercised independent judgment," does not establish supervisory authority. Sears, Roebuck & Co., 304 NLRB 193 (1991). Similarly, it is an individual's duties and responsibilities that determine his or her status as a supervisor under the Act, not his or her job title. New Fern Restorium Co., 175 NLRB 871 (1969).

The record establishes the artillery test leaders perform similar duties to the artillery testers. Moreover, the record is devoid of any evidence the artillery test leaders are supervisors within the meaning of Section 2(11) of the Act. The Employer's argument that the artillery test leaders are supervisors rests solely on a line in their contract with the Army and a second line in the 1993 wage determination to the effect that they have "experience leading" and "coordinate the efforts" of the crew. However, no evidence was presented that the actual duties of the artillery test leaders involved supervisory authority. In view of the foregoing, I find the artillery test leaders are **not** supervisors within the meaning of Section 2(11) of the Act and are **eligible to vote** in the election directed herein.

In summary, I direct an election in the following unit:

All full-time and regular part-time artillery testers and artillery test leaders employed by the Employer at its Aberdeen Proving Grounds facility, Aberdeen, Maryland, but excluding all other employees, office clericals, professionals, managerial employees, guards and supervisors as defined in the Act.

DIRECTION OF ELECTION

An Election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike that commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by **DISTRICT LODGE 12, LOCAL LODGE 2424, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS.**

LIST OF VOTERS

To insure that all eligible voters have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses that may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *N.L.R.B. v. Wyman-Gordon Co.*, 394 U.S. 759 (1969). Accordingly, it is directed that an eligibility list containing the *full* names and addresses of all the eligible voters must be filed by the Employer with the Regional Director within 7 days from the date of this Decision. *North Macon Health Care Facility*, 315 NLRB 359 (1994). The Regional Director shall make the list available to all parties to the election. No extension of time to file the list shall be granted by the Regional Director except in extraordinary circumstances. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed.

Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 103.20 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper and timely objections are filed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to

the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. The request must be received by the Board in Washington by **May 21, 2001**.

Dated May 7, 2001

at Baltimore, Maryland

/s/ WAYNE R. GOLD
Regional Director, Region 5



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